

**DEPARTMENT OF BOATING AND WATERWAYS**

2000 Evergreen  
SACRAMENTO, CA 95815-3831  
(916) 263-1331



# Information Letter

February 1, 1999

**TO:** *Licensed Yacht and Ship Brokers and Salespersons*

**FROM:** *Corrina Dugger & Dave Trillo  
Yacht and Ship Broker Licensing Unit*

**SUBJECTS:** *1) New Address and Telephone Numbers 2) New Laws 3) Property  
Tax Pro ration 4) Central Listings 5) Fax Signatures  
6) Professionalism 7) Commission Disputes 8) New Directory*

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## **We've Moved:**

The Department has moved! As of February 1, 1999, our new address and telephone numbers are as follows:

Department of Boating and Waterways  
Yacht and Ship Broker Licensing Unit  
2000 Evergreen Street  
Sacramento, CA 95815-3831

Corrina Dugger (916) 263-8195  
Dave Trillo (916) 263-8194  
Deb Durant (916) 263-8197 – Broker and Salespersons Licensing Inquiries  
Toll Free (888) 326-2822

## **New Laws:**

AB 2268, sponsored by the California Yacht Brokers Association, was signed by the Governor on September 13, 1998 and became effective on January 1, 1999.

It makes several important changes to the Yacht and Ship Brokers Act (Act), as well as technical corrections and minor clarifications.

1) Section 734, related to hearings and investigations, is amended to allow the Department to suspend a license granted under the Act without a proper hearing if a person refuses to make records available to the Department within 30 days and, subsequently, does not provide the records within 14 days after the Department has issued a subpoena for the requested records.

A broker whose license has been suspended for failure to make records available to the Department for inspection may request that a hearing be held before an administrative law judge within 30 days of the suspension. If the broker proves there was “good cause” to fail to provide the records, his or her license will be reinstated; however, if no good cause is established, the broker’s license may be revoked.

In connection with this change, Section 735.1 was added to the Harbors and Navigation Code. This section places in statutory law the requirement that a broker must retain specified records for four years and that those records must be made available to the Department upon request. This requirement was previously in a regulation promulgated by the Department.

2) Harbors and Navigation Code Section 734 is also amended to authorize the Department to request the administrative law judge, in any order issued in a disciplinary proceeding under the Act, to direct a licensee found to have committed a violation of the Act to pay the “reasonable costs” of the investigation, prosecution, and enforcement of the case. What constitutes “reasonable costs”, and the method by which they should be proved up by the Department, are outlined in detail.

This amendment also permits the Department to enforce the order for repayment in any appropriate court if timely payment is not made. In addition, the amendment prohibits the Department from renewing or reinstating the license of any licensee who has not paid all of the costs that an administrative law judge has ordered the licensee to pay.

3) Harbors and Navigation Code Section 737 has been amended to make explicit the Department’s authority, as provided in Section 739, to impose civil penalties as part of a disciplinary hearing conducted by an administrative law judge, in addition to any other disciplinary action and in lieu of a separate action in civil court. This will facilitate the Department’s collection of civil penalties imposed for various violations of the Act.

4) Section 650 of the Unemployment Insurance Code is amended to exclude the activities of license yacht brokers and salespersons from the definition of “employment” in the Unemployment Insurance Code for purposes of unemployment and disability insurance taxes when certain conditions are met. (NOTE: This change in the Unemployment Insurance Code does NOT affect the status of salespersons as “employees” under the Harbors and Navigation Code. For purposes of the Harbors and Navigation Code, salespersons remain employees and their activities continue to be subject to the supervision of their brokers. Brokers continue to have a duty to supervise activities of their

salespersons, even in cases when the broker-salesperson relationship agreement is written to provide the salesperson will not be treated as an employee with respect to his or her services for state tax purposes.)

The technical corrections and minor clarification in the bill include the following:

- 1) Harbors and Navigation Code Section 715 requires a person licensed under the Act to sign a closing statement in which title to a vessel is conveyed. The bill places into law the phrase “closing statement”, which heretofore had been described in other terms.
- 2) In Harbors and Navigation Code Section 731, the word “bond” is changed to “cash deposit.”
- 3) In Section 9863 of the Vehicle Code, a provision unrelated to the Yacht and Ship Brokers Act, the word “department” is changed to the “Department of Boating and Waterways,”

### **Personal Property Tax Proration:**

The Department has received many calls concerning the dates used in the last information letter, dated October 1, 1998, on how to prorate taxes for your clients. The example stated that the pro ration period was from July 1, 1995 to June 30, 1996. These dates were used as an **example** only. Brokers may use a pro ration period of January 1, 1998 to December 31, 1998, or any date, as long as the seller and buyer are in agreement with the pro ration period and the pro ration period equals one calendar year (365 days). The Department advises all brokers to call their county assessors to find out the prorated period used within their county.

For additional information you may contact the Board of Equalization @ 1-800-400-7115 or on the Internet @ [www.boe.ca.gov](http://www.boe.ca.gov)

### **Central Listing Agreement:**

On April 2, 1996 the Department issued an information letter that clearly indicated to the brokers that the term “Central” as a type of listing was not defined by the Yacht and Ship Brokers Act. The only type of listings currently defined are “Exclusive listing” and “Open listing” (see Title 14 California Code of Regulations Section 7601) Therefore, “Central listing” alone would not suffice as a type of listing agreement. In spite of this letter, many brokers continue to use the term “Central” to define their listing type. This is a violation of Section 716 (a) of the Yacht and Ship Brokers Act, which reads:

“No broker shall engage in any transaction for which a license is required under this article without first obtaining a signed written authorization to do so from the broker’s principal. An authorization to sell shall contain a description of the vessel, including the undocumented vessel’s registration number or the name, official number,

and home port if the vessel is documented with a federal agency. The written authorization shall also state the type of listing, the gross listing price, the agreed upon commission or other compensation of the broker, and any repairs authorized to be made.”

As the Department stated in the April 2, 1996 letter, this does not mean that you cannot use the term “Central”, “Central listing agreement”, “Central agent”, or “Central listing agent”, however, the term “Open” or “Exclusive” must be included in the specification. For example, many brokers have used “Central-Exclusive” as a type of listing agreement.

This letter serves as a **final warning** and urges brokers who have not complied with Section 716 (a), of the Yacht and Ship Brokers Act to do so. Effective immediately, if the Department finds that a broker is in violation of the above stated offense, we will seek the maximum penalties allowable under the Yacht and Ship Brokers Act.

### **Fax Signatures:**

During routine inspections, it has come to our attention that the brokers and salespersons are accepting fax signatures in place of original signatures. We fully understand that many transactions are conducted via fax, therefore, we will allow you to continue obtaining fax signatures in order to speed the transaction process. However, you are still required to retain documents with the **original signatures** for your records. If the Departments requests records and/or you are being inspected and you do not have original signatures in place, you will be subject to penalties. Retention of records with original signatures is necessary in order to facilitate the work of handwriting experts in disciplinary proceedings.

### **Professionalism:**

Unfortunately, the Department has been receiving a large number of telephone calls and letters from brokers stating their opinion about other brokers’ behavior, including personal comments about the others’ inexperience and inability to sell boats. We believe these comments are not only unnecessary, but extremely unprofessional. Ultimately, these comments are counter-productive for all concerned because what they describe are not violations of the Yacht and Ship Brokers Act; therefore, the Department has no authority to address them. No matter how you feel about another broker or their work ethic, please try to be considerate of each other. Strive to work together. It makes for a much better working environment!

### **Commission Disputes:**

The Department wants to inform you of a past case where we investigated a yacht broker for fraud, deceit, false statements or misrepresentation and breach of fiduciary duty and sought to revoke his license. In that case, an administrative law judge found that the broker had engaged in dishonest dealings by not paying his former employee an earned commission. Therefore, the judge ordered that he pay restitution to the former employee.

Although a commission dispute became an issue in this licensing action, the Department wants to reiterate that we **do not** handle commission disputes. The Department has verified that the Division of Labor

Standards Enforcement has a well-developed procedure for handling commission disputes.

If you have a commission dispute, we recommend that you contact the Division of Labor Standards Enforcement in your county to file a claim.

### **New Directory:**

Just a reminder, the new directory will be published in May 1999. If you would like to include your fax number or E-mail address, please forward the information to Deb Durant by mail or E-mail (ddurant@dbw.ca.gov) no later than April 30, 1999. Please do **NOT** telephone Deb with this information.

As always, we are here to help! If you need assistance on any issues, questions or concerns, please, do not hesitate to call us! We look forward to the New Year ahead!

Sincerely,

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Corrina Dugger

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Dave Trillo